

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. NO. 04-CV-10521-GAO

BETTY ANNE WATERS, as Administratrix of the
Estate of KENNETH WATERS,

Plaintiff

v.

TOWN OF AYER, NANCY TAYLOR-HARRIS,
in Her Individual Capacity, ARTHUR BOISSEAU,
In His Individual Capacity, BUDDY DECOT, In
His Individual Capacity, WILLIAM ADAMSON,
in His Individual Capacity, PHILIP L. CONNORS,
in His Individual Capacity, and JOHN DOE and
JANE DOES 1-16, in Their Individual Capacities,

Defendants

DEFENDANTS' MOTION TO
AMEND SCHEDULING ORDER

Now come the defendants to the above-referenced case and hereby respectfully move that the Court amend its December 19, 2007 Scheduling Order to extend the time for conducting expert depositions to allow for all expert depositions to be conducted by the end of March 2008.

As grounds for this Motion, the defendants rely on the within Statement of Reasons.

STATEMENT OF REASONS

1. On December 12, 2007, Defendants filed a Motion to Amend Scheduling Order (Docket Entry 132) to extend the time for taking expert depositions of the parties' police practices experts until February 29, 2008.

2. On or about December 19, 2007, the Court issued the present Scheduling Order, which provides as follows, "the depositions of Mr. Ford and Mr. Reiter shall take place during the week of February 4, 2008." (Docket Entry 138). During oral argument on said Motion, the Court (Dein, M.J.), stated that no further continuances would be allowed unless Attorney Tehan is actually on trial during that week.

3. Subsequently, the parties agreed that the depositions of their police practices experts would take place on February 4 and 6, 2008

4. As defense counsel informed the Court and opposing counsel in December, Attorney Tehan, who is lead defense counsel and will be conducting both police practices expert witness depositions, was on the “rolling trial list” beginning on January 7, 2008 in the case of Wohlgemouth v. Stoughton, 06-11729-WGY.

5. Trial in the Wohlgemouth case began on January 28, 2008. The trial is expected to continue on Thursday, January 31, 2008 and is expected to be completed late February 2008.

6. Therefore, Attorney Tehan is expected to be on trial on February 4, 2008 and February 6, 2008, when the depositions of Mr. Ford and Mr. Reiter, respectively, have been noticed.

7. Further, Attorney Tehan was also scheduled to be on trial in the matter of Glenn S. Bates v. Town of Harwich, et al., 05-10489-MEL, on February 25, 2008. A trial which Attorney Tehan will now be moving due to the schedule in the Wohlgemouth case. A new date for this trial has not yet been confirmed by the Court, but it is expected to commence immediately following the Wohlgemouth matter.

8. After receiving the proposed trial schedule for the Wohlgemouth case, defense counsel promptly contacted counsel for the plaintiff on January 29, 2008 to notify her of such trial schedule in light of the Court’s December 19, 2007 Scheduling Order regarding the depositions of Mr. Reiter and Mr. Ford.

9. Plaintiff’s counsel declined to join in this motion.

10. Attorney Tehan requires sufficient time to adequately prepare both for these two successive trials and Mr. Ford and Mr. Reiter’s depositions. These depositions involve matters that are factually and technically complex and involve issues of central importance to this case.

As lead and trial counsel, it is imperative that Attorney Tehan conduct these depositions on behalf of the defendants, and the defense will be severely prejudiced if this Motion is denied.

WHEREFORE, the defendants respectfully request that the time for taking depositions of the designated police practices experts be extended to allow the depositions to go forward at mutually convenient dates for the parties and Mr. Reiter and Mr. Ford during the month of March.

DEFENDANTS,

By their attorneys,

/s/Gregg J. Corbo

Joseph L. Tehan, Jr. (BBO # 494020)

Gregg J. Corbo (BBO # 641459)

Town Counsel

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